

cient excuse for such grossly neglectful behavior. To require the courts to permit their decrees to be amended by such out-of-court agreements with third parties as is here before us would create chaos in the enforcement of these decrees.

"Finally, there was no error in the refusal to continue the proceedings to permit appellants to procure the testimony of certain witnesses. Appellants received due notice that the hearing of the motion to forfeit was to be held on June 7, 1948. They had ample opportunity to procure any evidence they wished to present. Even if it is considered that a formal motion for continuance was made, no testimony was offered to sustain that motion. Appellants did not claim a diligent attempt by them to procure the desired testimony or offer a reasonable excuse for their inability to present this testimony on the date for which the hearing had long been set. But apart from the technical defects in appellants' position and entirely on practical considerations, the conduct of appellants as outlined above did not entitle them to any further consideration. "The judgments of the District Court forfeiting the bonds are affirmed."

**14596. Adulteration of canned sardines. U. S. v. 71 Cases \* \* \*. (F. D. C. No. 26086. Sample No. 10110-K.)**

**LIBEL FILED:** November 24, 1948, Southern District of New York.

**ALLEGED SHIPMENT:** On or about April 8, 1948, by the Romeo Packing Co., from San Francisco, Calif.

**PRODUCT:** 71 cases, each containing 48 15-ounce cans, of sardines at New York, N. Y.

**LABEL, IN PART:** "Valco California Sardines."

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the product was unfit for food by reason of its being disintegrated and by reason of its marked metallic flavor.

**DISPOSITION:** December 14, 1948. Default decree of condemnation and destruction.

**14597. Adulteration of frozen tullibeas. U. S. v. 231 Boxes \* \* \*. Tried to the court. Verdict for the Government. Decree of condemnation. (F. D. C. No. 25946. Sample No. 31592-K.)**

**LIBEL FILED:** November 18, 1948, Southern District of California.

**ALLEGED SHIPMENT:** On or about October 28, 1948, by Keystone Fisheries, Ltd., from Minneapolis, Minn.

**PRODUCT:** 231 125-pound boxes of frozen tullibeas at Los Angeles, Calif.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of parasitic worms.

**DISPOSITION:** Keystone Fisheries, Ltd., claimant, filed an answer denying that it had shipped the product in interstate commerce and that the product was adulterated, and it alleged that the court did not have jurisdiction since the product was in import status. The case came on for trial before the court on March 4, 1949, and at its conclusion was taken under advisement by the court. On March 22, 1949, the court handed down the following findings of fact and conclusions of law:

"HARRISON, *District Judge*:

**FINDINGS OF FACT**

"(1) Keystone Fisheries, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the Dominion of Canada, with its principal place of business in the City of Winnipeg, Canada.

"(2) On or about October 28, 1948, said Keystone Fisheries, Ltd., shipped an article of food consisting of 219 boxes, or 27,373 pounds, of frozen Tullibees from Winnipeg, Manitoba, Canada, to Los Angeles Smoking & Curing Co., Los Angeles, California, via Minneapolis, Minnesota. Said Tullibees were delivered by truck to the Olsen Fish Company, Minneapolis, Minnesota, as the agent for Keystone Fisheries, Ltd., for the purpose of reloading said Tullibees upon arrival into a railway refrigerator car for shipment to said Los Angeles Smoking & Curing Co., at Los Angeles, California.

"(3) Said Tullibees entered the United States at Noyes, Minnesota, on October 28, 1948, at which time the Secretary of the Treasury, while the said Tullibees were being imported or offered for import into the United States, took custody of said Tullibees and delivered to the Federal Security Administrator, upon his request, a sample of said Tullibees for examination.

"(4) W. F. Mackay, Customs Broker, of Noyes, Minnesota, acting for and as the agent of Keystone Fisheries, Ltd., secured the immediate delivery of the Tullibees by posting a redelivery bond with the Collector of Customs.

"(5) After the said delivery of said Tullibees upon said redelivery bond, said Tullibees were shipped by Keystone Fisheries, Ltd., from Minneapolis, Minnesota, to Los Angeles Smoking & Curing Co., at Los Angeles, in a railway refrigerator car.

"(6) On October 29, 1948, the Secretary of the Treasury contacted the Olsen Fish Company for the purpose of securing an additional sample and was advised that all of the said Tullibees were en route to the Los Angeles Smoking & Curing Co., at Los Angeles, California.

"(7) Said Tullibees are now in storage with the National Ice and Cold Storage Company at Los Angeles, California.

"(8) Said Tullibees were seized by the United States Marshal under Libel of Information filed in this Court and, by reason thereof, are now in his technical custody.

"(9) The Secretary of the Treasury has not released said Tullibees from the obligation of said redelivery bond. The Secretary of the Treasury states that he will not demand redelivery of said Tullibees, nor will he seek forfeiture of the said redelivery bond if said Tullibees are condemned as a result of this proceeding.

"(10) Said Keystone Fisheries, Ltd., is the owner of said Tullibees, and has intervened in this proceeding as claimant. Said Keystone Fisheries, Ltd., has requested of the Secretary of the Treasury, and the Federal Security Administrator, that said Tullibees be exported to said owner in accordance with the provisions of Section 381 of Vol. 21 of the United States Code Annotated.

"(11) Said Tullibees are a food within the meaning of 21 U. S. C. 321 (f) (1).

"(12) Said Tullibees are infested with parasitic worms as evidenced by pus pockets or cysts in the flesh of the fish, and were so infested when the Tullibees were imported into this country. These cysts contain greenish-yellow pus-like matter. Of the fish examined, 22 percent contained cysts, and some of the fish contained as many as five cysts.

"(13) Parasitic worms and cysts in fish constitute 'filthy substances' within the meaning of 21 U. S. C. 342 (a) (3).

"(14) When said Tullibees were delivered to Keystone Fisheries, Ltd., upon the posting of a redelivery bond with the Collector of Customs, Keystone Fisheries acquired complete control over their movement and disposition.

#### CONCLUSIONS OF LAW

"(1) The import provisions of the Federal Food, Drug, and Cosmetic Act [21 U. S. C. 381] are designed to test the right to admission before an article subject to the Act may be brought into the United States; the seizure provisions of the Act [21 U. S. C. 334] become operative after the article is released from the physical custody of the Collector of Customs and is admitted into the country.

"(2) Where immediate delivery of an imported food is obtained by the importer by the filing of a bond pursuant to 21 U. S. C. 381 (b), while an examination of a sample of such food is pending, the importer takes the risk that the result of the examination will be what he desires. Such food, if adulterated or misbranded, then becomes subject to seizure and condemnation, having passed the threshold of entrance into the United States.

"(3) With respect to imported, adulterated food released from the physical custody to the Collector of Customs under a redelivery bond pending examination of a sample, the Government has an election of remedies: (a) it may proceed by way of seizure and condemnation as it did here, or (b) it may request redelivery of the food to the Collector of Customs for export, though the importer is not required to redeliver the food but may elect to forfeit the bond.

"(4) The Government may properly elect that remedy which is best designed to protect the consuming public, rather than permit export of an adulterated food which might subsequently be commingled with good lots of the same food and again be offered for import in such a manner that the adulteration would be more difficult to detect.

"(5) Said imported Tullibees were 'introduced into interstate commerce' within the meaning of 21 U. S. C. 334 (a) when the Keystone Fisheries obtained their release from the physical custody of the Collector of Customs, and they further moved 'in interstate commerce' when they were shipped from Minneapolis, Minnesota, to Los Angeles, Calif.

"(6) Said Tullibees were adulterated within the meaning of 21 U. S. C. 342 (a) (3) when they were introduced into and while they were in interstate commerce in that they consist in part of filthy substances.

"(7) Said Tullibees are subject to condemnation pursuant to 21 U. S. C. 334 (a) and (d), and libelant is entitled to a decree ordering condemnation.

"(8) Libelant is entitled to its costs herein, pursuant to 21 U. S. C. 334 (e)."

On April 4, 1949, judgment of condemnation was entered and the product was ordered released under bond for conversion into fertilizer, under the supervision of the Federal Security Agency.

14598. Adulteration of frozen tullibees. U. S. v. 57 Boxes, etc. (F. D. C. No. 26095. Sample Nos. 10331-K, 10333-K to 10335-K, incl.)

**LIBEL FILED:** November 24, 1948, Southern District of New York.

**ALLEGED SHIPMENT:** On or about July 19, 1948, by Shapiro Fisheries, Inc., from Chicago, Ill.

**PRODUCT:** 69 boxes, containing a total of 8,666 pounds, of frozen tullibees at New York, N. Y.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of parasitic worms.

**DISPOSITION:** December 14, 1948. Default decree of condemnation and destruction.

14599. Adulteration of tullibees. U. S. v. 148 Boxes \* \* \*. (F. D. C. No. 26326. Sample No. 42325-K.)

**LIBEL FILED:** March 5, 1949, Western District of Michigan.

**ALLEGED SHIPMENT:** On or about February 7, 1949, by Mat Bodnar, from Winnipeg, Manitoba, Canada.

**PRODUCT:** 148 125-pound boxes of tullibees at Grand Haven, Mich.

**NATURE OF CHARGE:** Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of parasitic worms.

**DISPOSITION:** March 21, 1949. Default decree of condemnation and destruction. The decree was subsequently amended to provide for delivery of the product to a Federal institution, for use as fertilizer or animal feed.